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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,600	12/05/2001	Viveka Linde	ALBIHNW-424	3512
21003	7590	10/04/2007		
BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498			EXAMINER RUDY, ANDREW J	
			ART UNIT 3627	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/006,600
Filing Date: December 05, 2001
Appellant(s): LINDE ET AL.

MAILED
OCT 04 2007
GROUP 3600

Manu J. Tejwani
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 28, 2007 appealing from the Office action mailed September 6, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The requested Examiner's Amendment to claim 1, lines 3, 5 and 7 was not entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 3, the phrase "related to" is not clear as to what constitutes such.

Claim 1, line 5, the phrase "related to" is not clear as to what constitutes such.

Claim 1, line 7, the phrase "related to" is not clear as to what constitutes such.

Claim Rejections - 35 USC § 103

4. Claims 1-3, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Delurgio, US 7,092,896.

Delurgio discloses determining market share of a product, e.g. col. 5, line 37, comprising first, second and third data, e.g. 101-103, 238, 239 linking a computer, e.g. 210, the databases and determining, e.g. 233, market performance. Delurgio does not disclose the phrase post-launch performance. Official Notice is taken that post-launch performance of a product on a market has been common knowledge in the database marketing art. To have provided such for Delurgio would have been obvious to one of

ordinary skill in the art as Delurgio's determining is a similar attribute. It is noted that the databases are related to, as understood, in broad scope and content, to at least one key success factor, unmet product needs and a propensity of a decision-maker.

(10) Response to Argument

Appellant's REMARKS are noted regarding the 35 USC 112 rejection, but are not convincing. Simply put, the meets and bounds of the terminology is not understood by the Examiner.

Appellant's REMARKS are noted regarding the 35 USC 103 rejection, but are not convincing. Appellant's REMARKS regarding specific product marketing are not in accord with the recited claim language, as no such "product marketing" has been recited by Appellant from the claim language. Appellant further does not recite the step of "using a computer simulation model to project a future market share of the specific subject product. Claim 1 recites "using a simulation model on said computer" which is not equivalent to what Appellant argues. Thus, Appellant's REMARKS are not on point with regards to the claim language and should not carry the day. Delurgio is deemed to have a computer simulation model on a computer. It is noted Appellant does not contest the Official Notice taken by the Examiner. Thus, it is deemed admitted by Appellant. The Official Notice is deemed to "fill in the gaps" for Delurgio.

(11) Related Proceeding(s) Appendix

Art Unit: 3627

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A handwritten signature in black ink, reading "Andrew Joseph Rudy". The signature is fluid and cursive, with the first name "Andrew" being the most prominent.

Andrew Joseph Rudy

Primary Examiner, Art Unit 3627

Conferees:

Vincent Millin 

F. Ryan Zeender 